

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-10, 32, 38, 39, and 49-64 are presently active in this case. Claims 2, 5-10, 32, 38, 39, 49, 51, 52, 55-58, and 61-64 have been amended by way of the present amendment.

In the outstanding Office Action, the drawings were objected to; the disclosure was objected to; Claims 63 and 64 were objected to; Claims 5-10, 32, 49, 52-54, and 61-64 were rejected under 35 U.S.C. § 112, second paragraph; Claims 2, 3, 5, 6, 9, 38, 39, 49, 50, 52, 53, 61, and 62 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,637,403 to Garcia et al.; Claims 1, 4, and 54-56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Garcia et al. in view of U.S. Patent No. 5,582,184 to Erickson et al.; and Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Garcia et al. in view of U.S. Patent No. 5,380,278 to Mombrinie.

Claims 51 and 57-60 were indicated as being allowable. Further, Claims 7, 8, 32, 63, and 64 were indicated as being allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, second paragraph. Applicants acknowledge with appreciation the indication of allowable subject matter.

In response to the objection to the drawings, Applicants have submitted herewith substitute drawings. Those drawings do not include the inaccurate headers. In particular, Figure 7 has been changed to illustrate cathode 344. No further objection to the drawings is anticipated.

In response to the objection to the specification, the disclosure on page 8 regarding the method for providing a tattoo has been deleted. Further, the Examiner's suggestions

regarding addressing the remaining objections have been followed. Consequently, no further objection regarding the specification is anticipated.

Applicants acknowledge with appreciation the courtesy of an interview granted to Applicants' attorneys on September 10, 2003, at which time the outstanding issues regarding the claims and a potential interference were discussed. Examiner Marmor indicated in the interview summary that Applicants' proposed claim changes appear to obviate the rejections under 35 U.S.C. § 112, second paragraph. Therefore, Applicants have amended Claims 5-10, 32, 49, 52-54, and 61-64 substantially as proposed at the September 10th interview. No further objection or rejection under 35 U.S.C. § 112, second paragraph, is anticipated.

Regarding the prior art rejections, Applicants point out that Claims 55 and 56 define a vacuum device for introducing a vacuum onto a selected area of skin so as to enhance fluid flow from the skin, wherein a device for forming an opening in an area is capable of controlling the pressure level and/or timing of the vacuum. Applicants submit that neither Garcia et al. nor Erickson et al. teaches or suggests controlling the pressure level and/or timing of a vacuum. Rather, Garcia et al. merely teaches at column 13 lines 26-31 that blood or liquid can be delivered using a vacuum action. Garcia et al. does not disclose or suggest controlling the pressure level and/or timing of the vacuum. Likewise, Erickson et al. merely disclose a vacuum mechanism for providing an additional force to urge interstitial fluid into the passageway of a capillary tube. See column 7, lines 40-64 of Erickson et al. Hence, the subject matter defined by Claims 55 and 56 is not believed to be anticipated or rendered obvious by Garcia et al. when considered alone or in combination with Erickson et al.

In view of the indication of allowable subject matter, Applicants renew their request for an interference with the plurality of patents assigned to Abbott Laboratories and identified in Applicants' First and Second Requests for Interference. Applicants point out that, if an interference is proposed by the Examiner, then the Examiner is not prohibited from

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recommending that claims which stand rejected in view of prior art be designated as corresponding to one or more counts. The only requirement is that the claims define the same patentable invention as the subject matter defined by the count which it is designated as corresponding to--i.e., that they must be not patentably distinct. Examiner Marmor is right to confirm this with IPS Kashnikow.

Examiner Marmor is invited to contact the undersigned regarding this matter for any questions he may have regarding the requested interference. An early and favorable action is respectfully requested.

Respectfully submitted,

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